

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  FPL ENERGY HANCOCK COUNTY WIND, LLC	DOCKET NO. DRU-02-3 (WRU-02-28)
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**DECLARATORY ORDER**

(Issued August 27, 2002)

On July 29, 2002, FPL Energy Hancock County Wind, LLC (HCW), filed with the Utilities Board (Board) a petition for declaratory ruling or, in the alternative, request for waiver. HCW plans to build up to 148 wind turbines on two sites in Hancock County, Iowa. HCW is negotiating to sell the power to various Iowa utilities. The question presented by HCW is whether it is required, pursuant to Iowa Code Chapter 476A, to obtain a certificate of public convenience, use, and necessity prior to commencing construction on its wind project.

HCW filed a clarification to its request on August 2, 2002, and transmission interconnection studies on August 21, 2002. On August 8, 2002, the Consumer Advocate Division of the Department of Justice filed a response stating it did not object to the Board granting either the declaratory ruling or, alternatively, the waiver request. No objections to the petition were filed.

Iowa Code § 476A.2 provides "a person shall not commence to construct a facility except as provided in section 476A.9 unless a certificate for the facility has

been issued by the board." The statute the Board has been asked to construe is Iowa Code § 476A.1(5). This section defines "facility" as follows:

"Facility" means any electric power generating plant or a combination of plants at a single site, owned by any person, with a total capacity of twenty-five megawatts of electricity or more and those associated transmission lines connecting the generating plant to either a power transmission system or an interconnected transmission system or both. Transmission lines subject to the provisions of this chapter shall not require a franchise under chapter 478.

In addition, Iowa Code § 476A.15 gives the Board the authority to waive any of the requirements of Chapter 476A if the Board determines that the public interest would not be adversely affected by the waiver. In the event the Board finds Chapter 476A applies to the HCW project, HCW requests a waiver of the chapter.

The facts concerning the project are recited in the petition for declaratory ruling. The Northern project will consist of up to 148 individual wind turbine generators with a maximum nameplate generating capacity of 660 kW each, for a total project nameplate capacity of up to 97.7 MW. The project will be divided roughly in half and cover two areas in Hancock County, one that is approximately 13 square miles and the other that is approximately 15 square miles. HCW states that by spreading the turbines over two areas, it will be able to best maximize the higher elevations available.

Because the units are dispersed, the output of each unit will be collected through a network of feeder or "gathering" lines. No more than 37 individual

turbines, with a maximum total nameplate capacity of 24.42 MW, will be located on any single feeder or "gathering" line.

The Board ruled on similar requests for declaratory ruling in In Re: Zond Development Corporation, Docket Nos. DRU-97-5 and 97-6 (11/6/97) and In Re: Northern Iowa Windpower, L.L.C. Docket No. DRU-01-1 (WRU-01-8) (3/20/01). In those rulings, the Board found that the term "facility" as defined in Iowa Code § 476A.1(5) refers to "wind turbines connected to a single gathering line." The Board's ruling was consistent with Reid v. Iowa State Commerce Comm'n, 357 N.W.2d 588 (Iowa 1984). This case involved a single 150 MW generating plant that had already been added at the site of an existing 124 MW plant. The operating utility sought permission from the Commerce Commission (the Board's predecessor) to open and operate a landfill for the disposal of coal combustion residue at a farm six miles away. The Commission granted the certificate finding the landfill was an essential component of the generating plant.

On appeal, the issue concerned the definition of "facility" as used in Iowa Code § 476A.1 and, in particular, whether the words "at a single site" modify the term "any electric power generating plant" as well as the term "a combination of plants." The Court said the phrase modified only the term "a combination of plants." While the Court never therefore directly addressed the question of the proper application of the single site requirement, the implication was that a landfill located six miles away from the generating plant would not have met, if it had applied, the single site requirement.

The Federal Energy Regulatory Commission (FERC) provides that a qualifying small power production facility, located at any one site, cannot exceed 80 MW. In determining what is a single site, FERC considers everything within a one-mile radius as part of the site. 18 CFR § 292,204(a)(2). From the map submitted with HCW's petition, if site were defined in this manner, it appears no single site would exceed the 25 MW threshold. The FERC rules demonstrate another agency has limited the definition of "site" so a single site does not encompass tens of square miles of wind turbines.

In addition to the legal precedent cited above, the purposes behind and the interplay between Chapter 476A and Chapter 476 must be examined. Chapter 476A generally requires any person to acquire a generating certificate for a facility of 25 MW or more. The Board has the authority, if the public interest is not adversely affected, to waive the statutory requirements such that a generating certificate would not have to be obtained. This waiver authority now applies to facilities of any size. Previously, the waiver authority only applied to facilities of 100 MW or less. A certificate proceeding is a contested case proceeding. Generally, these proceedings take a minimum of six months.

The decision criteria for a certificate proceeding case are found in Iowa Code § 476A.6. House File 577 eliminated three of the six decision criteria from the siting chapter.

The three criteria are: 1) construction consistent with Iowa Code § 476.53 and the economic development policy of the state, and services and operations that

will not be detrimental to the provision of adequate and reliable electric service; 2) willingness to construct and operate pursuant to the terms of the certificate; and 3) construction and operation consistent with reasonable land use and environmental policies. These criteria, other than services and operations that will not be detrimental to the provision of adequate and reliable electric service, have little or no relevance to HCW's facility. The legislature has stated that the public policy of this state is "to encourage the development of alternate energy production facilities and small hydro facilities in order to conserve our finite and expensive energy resources and to provide for their most efficient use." Iowa Code § 476.41. In addition, Iowa Code § 476.53 states that it is the intent of the general assembly to attract electric power generating facilities to the state. The jobs and tax revenue created by the HCW's project are consistent with the state's economic development policies.

The transmission interconnection studies filed by HCW indicate that the proposed project will not be detrimental to the provision of adequate and reliable electric service. Because of the relatively small size of the project, it has minimal impacts on the transmission system. The proposed project will need approval from appropriate transmission reliability authorities, such as the Midwest Independent System Operator, for transmission service from the facility. If the project involved were significantly larger, transmission impacts would be more important and could necessitate a siting proceeding.

With respect to the second factor, HCW's willingness to perform the services will be evidenced by its contract or contracts to sell power. If HCW fails to perform, the buyer or buyers will have breach of contract remedies.

The final criteria relates to environmental and land use factors. The Board has generally deferred to findings by the Department of Natural Resources and local authorities on environmental and other permit issues. HCW will have to obtain any necessary environmental or other permits from the appropriate state or local body.

As it did in the Zond and Northern Iowa cases, the Board determines here that the term "facility" refers to the wind turbines connected to a common gathering line. According to the petition, up to 37 turbines will be connected to a gathering line. Because each group of 37 turbines has a nameplate capacity of no more than 24.42 MW, the 25 MW threshold of Chapter 476A is not met and no siting or generation certificate must be obtained from the Board prior to HCW commencing construction. HCW is exempt from the certification requirements of Chapter 476A under the facts recited in the petition.

The Board's construction is based, in part, on the interplay between Chapter 476A and the legislative policy embodied in Iowa Code § 476.41. Because of this legislative policy, any Board determinations required under Chapter 476A have already been made or are appropriately deferred to another regulatory body. If these projects did not involve renewable or alternate energy, the Board's construction may have been different. In addition, as noted earlier, the Board's determination may be different if a renewable or alternate energy project were large enough to have

significant impacts on the transmission system such that adequate and reliable service would be impaired.

The Board has found Chapter 476A does not apply to HCW's project as set forth in its petition. Therefore, the waiver request is moot and will not be addressed.

**IT IS THEREFORE ORDERED:**

The petition for declaratory ruling filed by FPL Energy Hancock County Wind, LLC, on July 29, 2002, is granted to the extent discussed in this ruling.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 27<sup>th</sup> day of August, 2002.